

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

1. KENNY HOLMES FLOORING SERVICE,	)	
LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: CIV-18-27-F
	)	
1. PEERLES INSURANCE COMPANY,	)	
a foreign for profit insurance corporation,	)	
	)	
	)	
Defendant.	)	

**COMPLAINT**

**A. Parties**

1. Plaintiff, Kenny Holmes Flooring Service, LLC, is an Oklahoma limited liability company wholly owned by its sole member, Kenny Holmes, with its principal place of business in the State of Oklahoma. Kenny Holmes is a citizen of the State of Oklahoma.

2. Defendant, Peerless Insurance Company, is a foreign for-profit insurance corporation, incorporated and organized under the laws of the State of New Hampshire.

3. The principal place of business for Defendant, Peerless Insurance Company, is Weston, Massachusetts.

4. The Defendant, Peerless Insurance Company, is licensed to conduct business in the State of Oklahoma and may be served with process through the Oklahoma Department of Insurance.

5. This action is not related to any other case filed in this court.

### **B. Jurisdiction**

6. The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because there is diversity between the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

### **C. Facts**

7. At all times material hereto, the Plaintiff, Kenny Holmes Flooring Service, LLC, was insured under the terms and conditions of a commercial general liability insurance policy, policy number 8413345, issued by the Defendant, Peerless Insurance Company.

8. At all times material hereto, the Plaintiff, Kenny Holmes Flooring Service, LLC, complied with the terms and conditions of its insurance policy.

9. On or about April 29, 2016, the Plaintiff was installing carpet for Commercial Carpet Contractors at 100 Park Avenue in Oklahoma City. At that time, Plaintiff's employee caused a sprinkler system to burst, resulting in damage to the building.

10. The above described damages are covered pursuant to the terms and

conditions of Plaintiff's commercial general liability insurance policy.

**D. Count I: Breach of Contract**

11. Plaintiff, Kenny Holmes Flooring Service, LLC, hereby asserts, alleges and incorporates paragraphs 1-10 herein.

12. The commercial general liability insurance policy, policy number 8413345, issued by Defendant, Peerless Insurance Company, was in effect on April 29, 2016.

13. Subsequent to April 29, 2016, Plaintiff, Kenny Holmes Flooring Service, LLC, timely submitted a claim to Defendant, Peerless Insurance Company. Defendant conducted an unreasonable investigation and evaluation, and failed to properly adjust and pay damages that were covered by Plaintiff's insurance policy.

14. The acts and omissions of Defendant, Peerless Insurance Company, in the investigation, evaluation, and payment of Plaintiff's claim were unreasonable and constitute a breach of contract for which contractual damages are hereby sought. Defendant, Peerless Insurance Company, breached its contract with Plaintiff, Kenny Holmes Flooring Service, LLC, by failing to act reasonably, diligently and timely in the investigation and evaluation of the claim. Additionally, Defendant failed to protect its insured, Kenny Holmes Flooring Service, LLC, from covered liability resulting from its negligence. The sprinkler head damage caused by Plaintiff resulted in approximately \$26,830.70 in damages to the

building. Instead of protecting the interests of its first-party insured, Kenny Holmes Flooring Service, LLC, and indemnifying the covered loss, Defendant unreasonably delayed during the claim process, resulting in Plaintiff incurring the damages resulting from its negligence. Defendant then improperly attempted to issue payment directly to Plaintiff in an amount less than the covered damages incurred by Plaintiff. Defendant unreasonably took the position that it was entitled to reduce and offset the payment to Plaintiff by a percentage of perceived negligence of third parties, despite the fact that the policy explicitly covers the damages incurred by Plaintiff. Defendant told Plaintiff that it was only issuing payment to him in the amount of \$8,049.21, because he was a good customer. Defendant further breached its contract with Plaintiff and acted unreasonably by telling Plaintiff that he should sue other third parties to recoup his losses.

**E. Count II: Bad Faith**

15. Plaintiff, Kenny Holmes Flooring Service, LLC, hereby asserts, alleges and incorporates paragraphs 1-14 herein.

16. The acts and omissions of Defendant, Peerless Insurance Company, in the investigation, evaluation, and denial of Plaintiff's claim were unreasonable and constitute bad faith for which extra-contractual damages are hereby sought. Defendant, Peerless Insurance Company, acted in bad faith by failing to act reasonably, diligently and timely in the investigation and evaluation of the claim.

Additionally, Defendant failed to protect its insured, Kenny Holmes Flooring Service, LLC, from covered liability resulting from its negligence. The sprinkler head damage caused by Plaintiff resulted in approximately \$26,830.70 in damages to the building. Instead of protecting the interests of its first-party insured, Kenny Holmes Flooring Service, LLC, and indemnifying the covered loss, Defendant unreasonably delayed the claim process, resulting in Plaintiff incurring the damages resulting from its negligence. Defendant then improperly attempted to issue payment directly to Plaintiff in an amount less than the covered damages incurred by Plaintiff. Defendant unreasonably took the position that it was entitled to reduce and offset the payment to Plaintiff by a percentage of perceived negligence of third parties, despite the fact that the policy explicitly covers the damages incurred by Plaintiff. Defendant told Plaintiff that it was only issuing payment to him in the amount of \$8,049.21, because he was a good customer. Defendant further breached its contract with Plaintiff and acted unreasonably by telling Plaintiff that he should sue other third parties to recoup his losses.

#### **F. Punitive Damages**

17. Plaintiff, Kenny Holmes Flooring Service, LLC hereby asserts, alleges and incorporates paragraphs 1-16 herein.

18. The unreasonable conduct of the Defendant, Peerless Insurance Company, in the handling of Plaintiff's claim was intentional, willful, wanton and

was committed with a reckless disregard for the rights of the Plaintiff, Kenny Holmes Flooring Service, LLC, for which punitive damages are hereby sought.

**G. Demand for Jury Trial**

19. Plaintiff, Kenny Holmes Flooring Service, LLC, hereby requests that the matters set forth herein be determined by a jury.

**H. Prayer**

20. Having properly pled, Plaintiff, Kenny Holmes Flooring Service, LLC, hereby seeks contractual, bad faith and punitive damages against the Defendant, Peerless Insurance Company, together in an amount in excess of \$75,000.00; including costs, interest and attorney fees.

Respectfully submitted,

S/ Michael D. McGrew

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